



PROJECT ON  
GOVERNMENT OVERSIGHT

Exposing Corruption. Exploring Solutions.

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December 19, 2018

Senator Johnny Isakson, Chairman  
Senator Christopher Coons, Vice Chairman  
U.S. Senate Select Committee on Ethics  
220 Hart Senate Office Building  
Second and Constitution Avenue, NE  
Washington, DC 20510-6425

Representative Susan Brooks, Chairwoman  
Representative Ted Deutch, Ranking Member  
U.S. House Committee on Ethics  
1015 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Isakson, Vice Chairman Coons, Chairwoman Brooks, and Ranking Member Deutch:

The Project On Government Oversight is a nonpartisan good government watchdog dedicated to upholding constitutional principles by demanding a more ethical, accountable, and effective federal government. Several recent articles have raised troubling concerns about whether members of Congress are seeking to profit from their legislative activity. It is important that when Members of Congress take action, citizens can be confident they are not doing so to further their own financial interests. I am writing to you to urge you to consider whether the current financial conflicts of interest rules for the House and the Senate are adequate.

Potential conflicts are particularly concerning when it comes to advocacy for increased expenditures of taxpayer dollars, as was raised by a recent article in the *Daily Beast*.<sup>1</sup> Senator James Inhofe (R-OK) has been a vocal advocate for increasing Pentagon spending, most recently co-publishing an article in the *Wall Street Journal*<sup>2</sup> and meeting with President Trump to advance this position. Shortly after meeting with the president, it was publicly announced the president would support a \$750 billion budget for the Department of Defense, and a few days later, according to the *Daily Beast*, Inhofe's financial advisor purchased between \$50,000 and \$100,000 in stock in Raytheon, one of the top five recipients of Department of Defense contract dollars. Senator Inhofe directed his financial advisor to sell the stock and to not purchase or trade defense or aerospace stock in the future, which the *Daily Beast* determined had been done

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<sup>1</sup> Lachlan Markay, "Sen. James Inhofe Bought Defense Stocks Days After Pushing for Record Pentagon Spending—Then Dumped It When Asked About It," *The Daily Beast*, December 12, 2018. <https://www.thedailybeast.com/sen-james-ihofe-bought-defense-stock-days-after-pushing-for-record-pentagon-spendingthen-dumped-it-when-asked-about-it> (Downloaded December 18, 2018)

<sup>2</sup> James Inhofe and Mac Thornberry, "Don't Cut Military Spending, Mr. President," *Wall Street Journal*, November 29, 2018. <https://www.wsj.com/articles/dont-cut-military-spending-mr-president-1543534509>

immediately after the press's inquiry. The *Daily Beast* story also pointed out that Inhofe has purchased or owned stock in other companies within his legislative purview, such as Continental Resources and New Field Exploration, energy companies with a direct financial interest in the activities of the Senate Environment and Public Works Committee, which he then chaired. We urge the Senate Select Committee on Ethics to consider whether Senator Inhofe's activity illustrates a need for further clarification or expansion of Senate Rules to prevent this problem from arising again.

In the House, there have been several instances of stock ownership creating conflicts. For example, Representative Chris Collins (R-NY) may have improperly used his position as a member of the House Energy and Commerce Committee, which has jurisdiction over health care and drug safety matters, to help a drug company for whom he served as a board member.<sup>3</sup> This fall, the House Ethics Committee initiated an Investigative Subcommittee after Representative Collins was indicted on federal charges of conspiracy to commit securities fraud and securities fraud, conspiracy to commit wire fraud and wire fraud, and false statements.<sup>4</sup> When the Office of Congressional Ethics transmitted its referral to the Committee in 2017, they additionally found that he may have purchased stock in Innate Immunotherapeutics Limited "that was offered to him based on his status as a Member of the House of Representatives."<sup>5</sup> The OCE also found that Collins may have taken official actions to "assist a single entity in which he had a significant financial interest," specifically requesting that a National Institutes of Health employee meet with Innate employees "to discuss clinical trial designs."

While some of these actions were likely already prohibited under current House Rules, Rep. Collins' stock ownership and board position were not explicitly prohibited. According to press reports, House Rules for the new Congress will prohibit members and staff from serving on corporate boards,<sup>6</sup> but Rules to address stock ownership need to go further. Another recent press report found that a number of Democratic members of the House Energy and Commerce Committee have a personal financial stake in oil and gas companies.<sup>7</sup> Specifically, the spouse of incoming Chair Frank Pallone (D-NJ) own stock in Chevron and Dominion Energy. Representative Joe Kennedy III (D-MA) owns between \$963,000 and \$2,195,000 worth of stock in Chevron, Exxon, and NextEra Energy. Other members with a financial stake in oil and gas

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<sup>3</sup> Dan Mangan, "Paul Ryan boots GOP Rep. Chris Collins from House Energy and Commerce Committee after insider trading indictment," *CNBC*, August 8, 2018. <https://www.cnn.com/2018/08/08/paul-ryan-boots-chris-collins-from-house-committee-after-indictment.html> (December 28, 2018)

<sup>4</sup> House Committee on Ethics, "Statement of the Chairwoman and Ranking Member of the Committee on Ethics Regarding Representative Christopher Collins," September 6, 2018. <https://ethics.house.gov/press-release/statement-chairwoman-and-ranking-member-committee-ethics-regarding-representative-22> (Downloaded December 18, 2018)

<sup>5</sup> Office of Congressional Ethics, "OCE Referral Regarding Rep. Chris Collins," October 12, 2017. <https://oce.house.gov/reports/investigations/oce-referral-regarding-rep-chris-collins> (Downloaded December 18, 2018)

<sup>6</sup> Lindsey McPherson, "Democrats' Draft House Rules Would Return Some Regular Order," *Roll Call*, November 16, 2018. <https://www.rollcall.com/news/politics/democrats-house-rules-regular-order> (Downloaded December 18, 2018)

<sup>7</sup> Alex Kotch, "Democrat on Key Energy Subcommittees Have Financial Stakes in Oil and Gas Companies," *Sludge*, December 17, 2018. <https://readsludge.com/2018/12/17/democrats-on-key-energy-subcommittees-have-financial-stakes-in-oil-and-gas-companies/> (Downloaded December 18, 2018)

companies include Representatives Scott Peters (D-CA), Debbie Dingell (D-MI), Kurt Schrader (D-OR), Peter Welch (D-VT), Mike Doyle (D-PA), and Jerry McNerney (D-CA).

### **Conflict of Interest Rules Are Needed to Strengthen Public Confidence in Congressional Decisionmaking**

These recent instances are part of a systemic problem of members in both chambers trading stocks that pose an apparent conflict of interest. A 2017 Public Citizen report found numerous other instances:

*Sen. Bob Corker (R-Tenn.) has recently traded hundreds of thousands worth of stock in energy infrastructure businesses while sitting on the Senate Banking, Housing and Urban Affairs Committee. Sen. Thad Cochran (R-Miss.) is also a busy player in energy stocks while sitting on the Senate Appropriations Subcommittee on Energy and Water Development. Sens. Sheldon Whitehouse (D-R.I.) and Pat Toomey (R-Pa.) actively trade in health care stocks while serving on healthcare subcommittees. Sen. Tom Udall (D-N.M.) trades in natural resources and precious metals stock while on subcommittees that oversee these industries.*<sup>8</sup>

Senate conflict of interest rules outline numerous prohibitions for Senators and their staff.<sup>9</sup> Specifically, Senators, officers, or employees are not allowed to “knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further only his pecuniary interest.”<sup>10</sup> The Rule also states that “No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.”<sup>11</sup>

Similarly, the House Committee on Ethics’ 2011 memorandum reminded Members and staff “Clause 1 of House Rule 3 provides: ‘Every Member...shall vote on each question put, unless having a direct personal or pecuniary interest in the event of such question.’”<sup>12</sup> But the memo noted that “longstanding House precedents have not found [stock ownership] to warrant abstention” unless “a direct personal or pecuniary interest” is present.<sup>13</sup> The memo also warned that Clause 1 of the Code of Official Conduct requires Members and staff to “behave at all times

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<sup>8</sup> Craig Holman, Ph.D., *The Impact of the STOCK Act on Stock Trading Activity by U.S. Senators, 2009-2015*, Public Citizen, June 22, 2017, p. 8. [https://www.citizen.org/system/files/case\\_documents/2017\\_stock\\_act\\_report.pdf](https://www.citizen.org/system/files/case_documents/2017_stock_act_report.pdf) (Downloaded December 18, 2018)

<sup>9</sup> Select Committee on Ethics, United States Senate, *The Senate Code of Official Conduct*, Rule XXXVII. March 2015, pp. 16-21. [https://www.ethics.senate.gov/public/index.cfm/files/serve?File\\_id=EFA7BF74-4A50-46A5-BB6F-B8D26B9755BF](https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=EFA7BF74-4A50-46A5-BB6F-B8D26B9755BF) (Hereinafter *The Senate Code of Official Conduct*)

<sup>10</sup> *The Senate Code of Official Conduct*, XXXVII, Paragraph 4.

<sup>11</sup> *The Senate Code of Official Conduct*, XXXVII, Paragraph 2.

<sup>12</sup> Committee on Ethics, “Memorandum to All House Members, Officers, and Employees,” November 29, 2011, pp. 3-4. <https://ethics.house.gov/sites/ethics.house.gov/files/fin%20trans%20pink%20sheet.pdf> (Downloaded December 18, 2018)

<sup>13</sup> Committee on Ethics, “Memorandum to All House Members, Officers, and Employees,” November 29, 2011, p. 4. <https://ethics.house.gov/sites/ethics.house.gov/files/fin%20trans%20pink%20sheet.pdf> (Downloaded December 18, 2018)

in a manner that shall reflect creditably on the House.” The Committee advised that under that clause, “members and employees who engage in trading with the benefit of material nonpublic information gained in congressional service may be investigated for, and may be found in violation, of clause 1.”<sup>14</sup>

Unfortunately, it is clear that the standards as written are not explicit enough to prevent the kinds of conflicts recently reported. Broadly, the House and the Senate should add to their Rules that members of Committees shall not own or trade stock in companies with a financial interest in their official duties to avoid even the appearance of a conflict of interest. Situations in which the potential benefit to the interested Member, officer, or employee is tenuous, remote or insubstantial—such as investments in a mutual fund that holds stock in many companies—should not be considered a conflict of interest.

It appears that Senator Inhofe did not know about the specific transaction and therefore did not violate the current conflict of interest rules. We urge the Committee to consider whether the current conflict of interest rules are sufficiently clear, especially in light of the fact that many members rely on financial advisors to act on their behalf. Expanding the rules to prevent conflicts affirmatively would be a more effective safeguard. If the Senate Select Committee on Ethics does seek to investigate Chairman Inhofe’s portfolio and trading history, we would encourage an inquiry into whether the Senator shared any nonpublic information with his advisor, which could violate The STOCK Act.<sup>15</sup> It should also investigate his decision to contact his financial advisor via a letter printed on his official letterhead, an action that creates the appearance of using public resources for a purely private matter.

Ethics rules and laws should bolster public confidence in the integrity of Congress and the decisions members make for the country. Without effective conflict of interest reforms, we fear that this confidence will continue to erode. We urge you to close these loopholes to ensure that Congress is focused on doing only what’s best for the country.

Sincerely,



Danielle Brian

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<sup>14</sup> Committee on Ethics, “Memorandum to All House Members, Officers, and Employees,” November 29, 2011, p. 3. <https://ethics.house.gov/sites/ethics.house.gov/files/fin%20trans%20pink%20sheet.pdf> (Downloaded December 18, 2018)

<sup>15</sup> Stop Trading on Congressional Knowledge Act of 2012, Public Law 112-105, Sec. 3. <https://www.congress.gov/112/plaws/publ105/PLAW-112publ105.pdf>